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Attorneys for Defendant
FREMONT UNIFIED SCHOOL DISTRICT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUANNE HESS,

Plaintiff,

VS.

FREMONT UNIFIED SCHOOL DISTRICT,
a public entity,

Defendant.

CASE NO.: C-08-02400 JSW

JOINT CASE MANAGEMENT STATEMENT

DATE: August 21, 2008

TIME: 11:00 A.M.

COURTROOM: 9, 19th Floor

1 The parties first became aware of the Court's Order coordinating the three cases outlined
2 herein for purposes of Case Management on August 18, 2008.

3 This case is brought pursuant to the Fair Labor Standards Act et seq. seeking past wages
4 and overtime pay. As noted below, there are two related federal court actions and two state court
5 actions which arise out of the DISTRICT's Vandal Watch Program. One of the state court
6 actions, Russ, et al. v. Fremont Unified School District, Alameda Superior Court Case No. HG-
7 05239834, is on appeal from the granting of a summary judgment in favor of the DISTRICT.
8 The other state court action, William Hess, et al. v. Fremont Unified School District, et al.,
9 Alameda County Superior Court Case No. is a class action. Plaintiffs have not moved to certify
10 the class.

11 Defendant has been served.

12 II. FACTS

13 This lawsuit arises out of the lease of school property to plaintiffs for residential use under
14 the DISTRICT's Vandal Watch Program. Defendant asserts that such lease arrangements are
15 authorized by California Education Code Section 17574. Plaintiff, LUANNE HESS, pursuant to
16 the Fair Labor Standards Act, 29 U.S.C. Section 207(A) et seq. (hereinafter referred to as the
17 "FLSA") filed her complaint seeking wages and overtime pay.

18 The DISTRICT contends that plaintiff signed lease agreements with the DISTRICT
19 pursuant to California Education Code Section 17574, which allows the residential use of land at
20 school sites. In return, plaintiff agreed to maintain surveillance of the grounds. Plaintiff alleges
21 that she was an "employee" of the DISTRICT under the meaning of the Act during the entire time
22 they lived on DISTRICT property and is entitled to back pay.

23 III. LEGAL ISSUES

24 According to Plaintiff:

- 25 1. Is the whether or not defendant was obligated to, and did in fact comply, with
26 FLSA regarding its pay practices to plaintiff under the Fair Labor Standards Act
27 ("FLSA")?

28 //

According to Defendant:

1. Is there interstate commerce under Fair Labor Standards Act ("FLSA")?
2. Is plaintiff an employee within the meaning of the FLSA?
3. Is the relationship between plaintiff and defendant governed by leases as authorized by the Education Code Section 17574?

IV. MOTIONS

The DISTRICT requests that, due to the concurrent state court actions which involve the same set of facts and circumstances and the possibility of inconsistent rulings, that the court stay the federal action under the authority of Daugherty v. Oppenheimer & Co., Inc. 2007 WL 1994187 (N.D.Cal. Jul 05, 2007). The DISTRICT anticipates filing a Motion for Summary Judgment on the applicability of the federal law in this case, i.e. the lack of requisite interstate commerce under the FLSA, and that California Education Code 17574 is controlling.

Plaintiff intends to file a motion for summary judgment and declaratory/injunctive relief on the grounds that FLSA clearly applies to the DISTRICT and that DISTRICT'S failure to pay Plaintiff in accordance with FLSA is not excused by any state law.

V. AMENDMENT OF PLEADINGS

The parties have meet and conferred regarding an Amended Answer to the Complaint. A proposed Stipulation and proposed Amended Answer have been circulated to plaintiff's counsel.

VI. EVIDENCE PRESERVATION

Defendant is unaware of the steps taken by the plaintiff to ensure the preservation of relevant evidence. Plaintiff has no electronic evidence that of which she is aware.

VII. DISCLOSURES

Plaintiff and Defendant intend to make its initial disclosures by August 22, 2008.

VIII. DISCOVERY PLAN

Defendant intends to serve interrogatories, document requests and request for admissions and depose the plaintiff and any percipient witness to the lease and the services performed. Plaintiff will propose various stipulations to reduce the need for pre-trial discovery and expects to complete that discovery on or before February 15, 2009.

1 **IX. CLASS ACTIONS**

2 This case is not a class action. As stated earlier, a related class action complaint has been
3 filed in Alameda County Superior Court based solely on California state law. Damages in this
4 action are calculated pursuant to FLSA based on each hour actually worked plus applicable
5 prejudgment interest and penalties.

6 **X. RELATED CASES**

7 On February 28, 2008, plaintiffs WILLIAM HESS, LUANNE HESS and DOT
8 EGGERLING filed an action in Alameda County Superior Court seeking damages and
9 declaratory and injunctive relief. The state action is based on the same theory of recovery, i.e.
10 that plaintiffs as vandal watchers are entitled to minimum wage and overtime pursuant to state
11 law. This is the same theory under which each of the plaintiffs in the following federal court
12 actions:

- 13 a) *William Hess v. Fremont Unified School District*, Case No.: C-08-02399 JSW;
- 14 b) *Luanne Hess v. Fremont Unified School District*, Case No.: C-08-02400 MMC;
- 15 c) *Dot Eggerling v. Fremont Unified School District*, Case No.: C-08-02401 WHA

16 Plaintiffs' allegations in the state action filed in the Superior Court, State of California,
17 County of Alameda, Case No. RG08372899, confirms that plaintiff's' recognize that the three
18 separate federal actions filed by the three individuals arise of the same subject matter as each
19 other's federal action as well as the state action. Counsel intend to file a joint motion to
20 consolidate the actions.

21 **XI. RELIEF**

22 Plaintiff is seeking monetary damages for her claimed wages and back pay as well as
23 attorney's fees. Damages are calculated pursuant to FLSA based on each hour actually worked
24 plus applicable prejudgment interest and penalties.

25 **XII. SETTLEMENT AND ADR**

26 The DISTRICT does not request a settlement conference and has requested early neutral
27 evaluation. Plaintiff has requested mediation.

28 //

XIII. CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES

The parties do not consent to a Magistrate Judge for all purposes

XIV. OTHER REFERENCES

The parties do not believe the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

XV. NARROWING OF ISSUES

Defendant believes that the applicability of the FLSA and California Education Code Section 17574 can be resolved by summary judgment. Plaintiff intends to move to strike defendant's affirmative defense under the California Education Code as inapplicable to FLSA claims.

XVI. EXPEDITED SCHEDULE

The parties do not believe that this is the type of case that can be handled on an expedited basis with streamlined procedures.

XVII. SCHEDULING

The defendant proposed the following dates:

Cutoff for non-expert discovery:	October 9, 2009
Designation of experts:	August 15, 2009
Cutoff for expert discovery:	December 15, 2009
Hearing of dispositive motions:	November 15, 2009
Pretrial Conference:	November 1, 2009
Trial:	January, 2010

The plaintiff proposes the following dates:

Cutoff for non-expert discovery:	April 15, 2009
Designation of experts:	May 15, 2008
Cutoff for expert discovery:	July 1, 2009
Hearing of dispositive motions:	August 15, 2009;
Pretrial Conference:	September 15, 2009
Trial:	September 22, 2009

XVIII: TRIAL

The case will be tried by the court. The parties believe that it will take 7 to 10 days, depending upon what issues have been adjudicated prior to trial.

XIX: DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Aside from the cases referred to under Paragraph X, the parties are unaware of any persons, firms, partnerships, corporations, or other entities who have either (1) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

XX. OTHER MATTERS

There are no items set forth in Civil L.R. 16-10 that have not been addressed above.

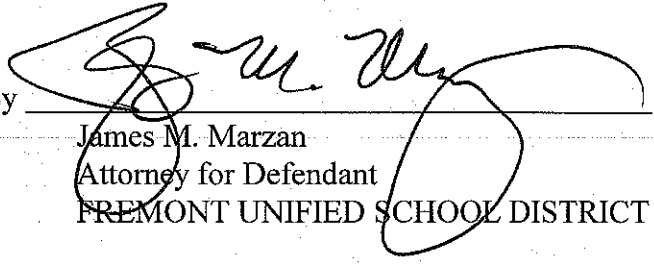
DATED: August 19, 2008

JOHN KITTA & ASSOCIATES
CHARLES G. WILLIAMS, ESQ.

By ELECTRONICALLY FILED
Charles G. Williams, Esq.
Attorneys for Plaintiff
LUANNE HESS

DATED: August 19, 2008

EDRINGTON, SCHIRMER & MURPHY

By 
James M. Marzan
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FREMONT UNIFIED SCHOOL DISTRICT